WARTHA RADJU MUNISAMY A

v.

TENG MUI NGEE,
PRESIDEN KELAB DIRAJA SELANGOR B

HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J
[ORIGINATING SUMMONS NO: R1-24-92-2010]
31 JANUARY 2011 C

UNINCORPORATED ASSOCIATIONS: *Club - Member - Cessation of plaintiff's membership - Plaintiff's past criminal convictions prior to his club membership - Whether r. 23(i)(d) of the Club's Constitutional Rules includes such situation - Whether plaintiff was unfit to be a member - Defendant's decision final and binding on plaintiff - Whether court should interfere with defendant's decision - Whether decision was mala fide, against natural justice or in excess of jurisdiction* D

The plaintiff, who was a member of the Royal Selangor Club ('the Club'), sued the defendant in his capacity as the President of the Club for the cessation of his membership. The cessation was made by the Club General Committee ('GC') pursuant to r. 23(i)(d) of the Club's Constitutional Rules ('the Rules') following the fact that the plaintiff had past criminal convictions. The records of the past convictions were obtained from the Criminal Investigation Department of the Royal Malaysian Police ('CID'). The plaintiff contended that the r. 23(i)(d) did not apply to convictions prior to a person being a member. An order directing the Club to restore the plaintiff's name in the member list was granted pending the disposal of the matter. The issues in contention were: (i) whether the term 'conviction' under r. 23(i)(d) included past convictions which were subsequently brought to the attention of the Club; and (ii) whether the plaintiff was fit to be a member of the Club in light of the past convictions. E F G

Held (dismissing the application): H

(1) Rule 23(i)(d) could not be interpreted to exclude past convictions as this would render the management of the Club powerless to uphold the dignity of the Club and interests of its members. Therefore, the word 'conviction' under r. 23(i)(d) would mean all convictions including past convictions subsequently brought to the Club's notice. As to the question of whether a member with a past conviction was fit to be a I

member of the Club, it was best left to the GC. The decision of the defendant was based on its opinion, it was not a question of law but of ethics; the court will not interfere even if the decision was unreasonable unless the GC had acted dishonestly or in excess of its jurisdiction. (para 10)

(2) The defendant had taken all reasonable steps to ensure that the plaintiff was in fact disqualified from membership by seeking confirmation from the proper authority *ie*, the CID which had the records of the plaintiff's past convictions. There was no reason for the court to question the evidence produced by the defendant. Furthermore, the plaintiff had failed to contradict the defendant's evidence. Based on the evidence obtained by the defendant, the GC was satisfied that r. 23(i)(d) applied. (para 11)

(3) The Rules provide that the decision of the GC should be final and binding on all members, and there was no provision of appeal. However, the court was not precluded from inquiring into the decision if it was shown that the GC's action was tainted with *mala fide* or malice. The defendant had complied with the requirements of natural justice and had acted within its jurisdiction. The injunctive order pending the disposal of this action was dissolved. (paras 12 & 13)

Case(s) referred to:

Charan Dass Sadhu Ram v. YM Tunku Abdul Aziz & Ors [2006] 5 CLJ 617 HC ***(refd)***

Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26 FC ***(refd)***

Dawkins v. Antrobus [1881] 17 Ch D 615 ***(refd)***

Florence Bailes v. Dr Ng Jit Leong [1981] 1 LNS 172 ***(refd)***

H Rubber Estate Bhd v. Director General of Inland Revenue [1978] 1 LNS 56 FC ***(refd)***

Lee v. The Showmens Guild of Great Britain [1952] 1 All ER 1175 ***(refd)***

Lim Yee Cheong v. Haji Mokty Datuk Mahmood & Ors [1984] 1 LNS 39 FC ***(refd)***

Mary Colete John v. South East Asia Insurance Bhd [2010] 8 CLJ 129 FC ***(refd)***

Provincial Insurance Co Ltd v. Yee Chee Swee [1984] 2 CLJ 12; [1984] 1 CLJ (Rep) 314 FC ***(refd)***

Tharmalingam v. Sambanthan [1960] 1 LNS 143 HC ***(refd)***

Legislation referred to:

Penal Code, s. 420

For the plaintiff - D Kalai; M/s Kalai & Partners
For the defendant - Tunku Farik Ismail (Tan Sixin with him); M/s Azim, Tunku Farik & Wong

Reported by Melinda Robert

JUDGMENT

Aziah Ali J:

[1] The plaintiff is an ordinary member of the Royal Selangor Club ("the Club") since the year 1994. The defendant is the President of the Club and is sued in his capacity as an office bearer of the said Club. By way of this action the plaintiff prays for the following reliefs:

(a) A declaration that the decision by the General Committee of Kelab DiRaja Selangor on 22 June 2010 in ceasing the membership of the plaintiff and removing the plaintiff's name from the list of members pursuant to the 23(i)(d) of the Constitution of Kelab DiRaja Selangor is null and void and of no effect.

(b) An order directing Kelab DiRaja Selangor to restore the plaintiff's name in the members list of Kelab Diraja Selangor without any loss of benefit and seniority with immediate effect.

(c) General damages to be assessed.

(d) Interest and costs.

(e) Further or other relief as this Honourable Court may deem fit to grant.

Pending the disposal of encl. 1, I allowed the plaintiff's application made *vide* summons in chambers (encl. 3) for a mandatory order directing the Club to restore the plaintiff's name in the members list of the Club without any loss of benefit and seniority with immediate effect.

[2] The factual matrix of this case is as follows:

(a) By a letter dated 3 June 2010 issued by the General Manager/ Secretary of the Club (exh. W2) the plaintiff was informed as follows:

A 03 June 2010

Re: Cessation Of Membership

We have been directed to inform you that the Club has been reliably informed as follows:

B

(a) That a criminal conviction was recorded against your name in the Petaling Jaya Court in 1973 and a sentence of 12 months and a fine of Ringgit 500 was imposed.

(b) It has been further reported in the Australian Law
C Reports (53 NSWLR 471) that one Mr. Wartha Radju was indicted in the Sydney District Court on three counts of obtaining a valuable thing by deception contrary to s. 178BA of the Crimes Act 1900 and an application for special leave to the High Court was refused. Our
D External liaison, Operations and Membership Chairman had on 20 May 2009 shown you this Law Report and you informed him that it was a Civil Matter (which in fact is a criminal matter). Our External liaison, Operations & Membership Chairman then requested whether you were prepared to deny that it was you as
E reported in the said Law Report. You had by way of a Statutory Declaration dated 21 May 2009 (copy enclosed) denied that it was not you as mentioned in the said Law Report. The Australian Federal Police have informed us that they are prepared to release the
F information in respect of the conviction if you are prepared to give your consent to them. Kindly let us know whether you are prepared to give your consent to prove that you are not the person as mentioned in the report.

G (c) In view of the foregoing the General Committee hereby requires you to show cause within seven (7) days from the date hereof as to why your name should not be removed from the list of Members of the Club pursuant to Rule 23(i) of the Constitutional Rules of the Club.

H (b) The plaintiff responded by letter dated 9 June 2010 (exh. W3) as follows:

I

Re: Response To Cessation Of Membership

I received your letter dated on 3rd June 2010 and the contents were noted.

As requested in your letter, that I need to respond within 7 days, I hereby respond accordingly.

I hereby request that all relevant documents pertaining to the above matter to be forwarded to me by acknowledged Registered (AR) post at the above address, as my Solicitors needs them very urgently.

I also bring to your attention that I need a copy of the Letter from the Complainant who has made the complaint. This I believe is my constitutional right.

Take note my current postal address is as stated above right.

Your urgent reply in writing is much appreciated.

(c) The Club replied to the plaintiff by letter dated 14 June 2010 (exh. W4) as follows:

Dear Mr. Radju,

Re: Cessation Of Membership

Thank you for your letter dated 9 June 2010.

We regret to inform you that we are unable to accede to your request as we are not authorized to release the said documents and the information given to us was dropped in the Club letter box.

However we append below the information which will enable you to respond to our letter:

Name: Wartha Radju a/l Munisamy

NRIC: New IC 530704105993 Old IC 08043042

Police Report: Sg Way 2573/73 Petaling Jaya

Offence under section 420 Penal Code. Convicted & sentenced to 12 months imprisonment.

Police Report: Jalan Dang Wangi 6856/79 Kuala Lumpur

A Offence under section 379 Penal Code

We also wish to draw your attention to paragraph (b) of our letter dated 3 June 2010 to which you failed to respond.

B We are sending this letter to the address provided to the Club and a copy to the address you provided us in your letter dated 9 June 2010.

Kindly let us have your response within seven (7) days from the date hereof failing which we will invoke Rule 23(i) C of the Rules of the Club.

(d) The plaintiff replied (exh. W5) as follows:

I refer to your letter dated 14/6/2010.

D I regret that you have chosen to hide documents and information and make allegations about me based on the said documents.

You are not giving me a fair chance to study the same and reply accordingly.

E

In any event, I deny all the allegations contained in your letter dated 3/6/2010 and 14/6/2010.

I again request you to furnish the so called documents dropped in your letter box so that I can prepare my F defence.

Again, I wish to stress that my right to be heard includes access to the purported documents which you are using to accuse me.

G (e) By letter dated 22 June 2010 (exh. W6) the defendant informed the plaintiff that the General Committee ("GC") of the Club has removed his name from the list of Members pursuant to r. 23(i)(d) of the Club's Constitutional Rules ("Rules").

H

[3] By letter dated 12 July 2010 the plaintiff requested Bahagian Risikan Jenayah (D4) of the Royal Malaysian Police to verify whether he has any criminal record (exh. W8). The reply came *vide* letter dated 15 July 2010 (exh. W9) as follows:

I

Semakan oleh pejabat ini mendapati tiada kesalahan jenayah yang didaftarkan di bawah nama Tuan sehingga hari ini iaitu 15hb. Julai, 2010.

Despite the plaintiff's repeated requests for the cessation of his membership to be revoked, the plaintiff was informed by letter dated 24 August 2010 (exh. W15) that the GC of the Club has decided to maintain his membership status.

[4] The defendant states that the plaintiff failed to provide a satisfactory explanation, or any explanation at all with regard to the show cause letter despite being provided with further information as requested by the plaintiff. Neither did the plaintiff request for extension of time to provide his explanation. In the defendant's affidavit in reply the following documents were produced in support of the defendant's contention that the decision of the GC to cease the plaintiff's membership under r. 23(i)(d) of the Club's Rules is valid:

(a) a facsimile cover sheet dated 23 July 2010 from Supt Wan Abd Aziz Hamzah from the CID Secretariat, Criminal Investigation Department, Bukit Aman Police HQ (exh. TNM4) stating that:

(i) the plaintiff has two previous convictions –

Sg Way Rpt 00002573/73 – charged and convicted (s. 420 PC)

Sg Way Rpt 00002700/73 – charged and convicted (s. 420 PC)

(ii) the CID records show that the new IC number of the plaintiff is different from the number mentioned in the defendant's letter dated 9 July 2010 and according to the CID record the new IC number is 530704-02-5953 and not 530704-10-5993;

(b) a copy of the result of identity card search dated 23 August 2010 from the National Registration Department which reveals that:

(i) the plaintiff's identity card number 530704105993 was issued on 1 July 2003;

(ii) the plaintiff's identity card number 530704025053 was issued on 9 February 2003;

(iii) the plaintiff's old identity card number is 8043042.

A (c) the plaintiff's 'Proposal For Election To Membership Form' dated 12 May 1994 which shows the plaintiff's old identity card number 8043042 (item 6.c.) (exh. TNM2);

(d) a letter dated 11 November 2010 from the National
B Registration Department (exh. TNM4) confirming that:

(i) the plaintiff had been issued with identity card number 530704-02-5053 which was subsequently revoked due to an error in the state code and had been issued with a new
C identity card number 530704-10-5993;

(ii) the identity card numbers 530704-02-5053 and 530704-10-5993 (804342) refers to the same person 'Wartha Radju a/l Munisamy'.

D **[5]** The defendant further refers to the plaintiff's affidavit in support which shows the plaintiff's identity card number as 530704-10-5993. The defendant avers that the plaintiff ought to have declared his three identity card numbers in his proposal for membership form at the time of making the application or
E immediately upon becoming aware of the different identity card numbers. His failure to do so clearly demonstrates the plaintiff's unsuitable character as a member of a prestigious club. The defendant contends that the GC's decision pursuant to r. 23(i)(d) is in order and by virtue of r. 38(i) of the Club's Constitution, the
F GC's decision is final and binding on all members including the plaintiff. There is no appeal for cessation of membership due to previous convictions except as provided by the proviso to r. 23(i) where the convictions are set aside by the courts.

G **Submissions**

[6] In his written submissions counsel for the plaintiff submits that in interpreting r. 23(i)(d) the plain ordinary meaning ought to be applied unless it leads to absurdity (*Chin Choy & Ors v. Collector of Stamp Duties* [1978] 1 LNS 26; *H Rubber Estate Bhd v.*
H *Director General of Inland Revenue* [1978] 1 LNS 56). Counsel submits that in its plain and ordinary meaning r. 23(i)(d) does not apply to any conviction prior to a person becoming a member of the Club. For the defendant it is submitted that such an interpretation is far-fetched and will create absurdity and defeat
I the purpose of r. 23(i)(d) which is aimed at maintaining the Club's

status as a 'gentlemen's club'. It is submitted that the words of r. 23(i)(d) in its ordinary meaning are intended to cover all convictions including past convictions and it is absurd to interpret it otherwise.

Decision

[7] Membership of a club or association is primarily a matter of contract. In *Tharmalingam v. Sambanthan* [1960] 1 LNS 143 Ong J said:

> It is axiomatic that, in disputes between members of such an association, the rights of the plaintiff must depend on contract, because, by accepting membership of the association he contracted to be bound by its rules. Hence the material terms of their contract must be sought in the rules of the association

[8] The authorities relied on by counsel for the plaintiff as an aid to interpretation of r. 23(i)(d) are not applicable as these authorities deal with the interpretation of statutes relating to tax. I agree with counsel for the defendant that reference to the Societies Act 1966 of r. 23(i)(d) is misconceived. The specific language used in r. 23(i)(d) ought to be given their plain, ordinary meaning in the context of the Club's Constitutional Rules. I am guided by the Federal Court case of *Provincial Insurance Co Ltd v. Yee Chee Swee* [1984] 2 CLJ 12; [1984] 1 CLJ (Rep) 314 where on the interpretation of insurance policy, Hashim Yeop Sani FJ said *inter alia* as follows:

> ... the words used in it must be given their plain, ordinary meaning **but in the context of the policy looked at as a whole** and subject to any special definition contained in the policy. (emphasis added).

[9] Rule 23(i)(d) of the Club's Rules reads (exh. W1):

> **Cessation Of Membership**
>
> 23(i) A Member shall cease to be a member and his name shall be removed from the list of Members of the Club in any of the following events:

A (a) ...

(b) ...

(c) ...

B (d) If he is convicted of an offence which in the opinion of the General Committee renders him unfit to associate with members of the Club;

(e) ...

C (f) ...;

Provided that in the events mentioned in paragraphs (c) and (d) the General Committee shall restore his name to the list if his bankruptcy is annulled or his conviction is set aside, as the case may be.

D (ii) ...

Thus on the plain words of r. 23(i)(d) once it is determined that:

(a) a member of the Club is convicted of an offence, and

E (b) in the opinion of the GC that fact renders him unfit to associate with the members of the Club,

then such member shall cease to be a member.

F **[10]** I am unable to agree with counsel for the plaintiff that r. 23(i)(d) does not apply to convictions prior to a person becoming a member of the Club. The said rule does not state so. I am of the opinion that counsel for the plaintiff is importing into r. 23(i)(d) an intention that is not reflected by the plain words of G the said rule. In *Mary Colete John v. South East Asia Insurance Bhd* [2010] 8 CLJ 129 Heliliah Mohd Yusof FCJ in delivering the judgment of the Federal Court said:

H The proper construction to be placed on words is a matter of law for the court. As observed by Lord Denning MR in *Starfire Diamond Rings Ltd v. Angel* [1962] 2 Lloyds Law List Reports 217, CA. It is a mistake for a lawyer to attempt a definition of ordinary words and to substitute other words for them. The best way is to take the words in their ordinary sense and apply them to the facts.

I

Counsel for the defendant submits that the Club is a prestigious "gentlemen's club". I take note that many of its members are persons of eminence and members of society of good standing. It goes without saying that it is in the common interest of the Club and its members that the dignity of the Club and the interests of its members be preserved by ensuring that only persons who are in the opinion of the GC fit to be members of the Club are accepted or allowed to remain as members. I agree with counsel for the defendant that to interpret r. 23(i)(d) in the manner advocated by counsel for the plaintiff would lead to absurdity. It would mean that the management of the Club would be rendered powerless to uphold the dignity of the Club and the interests of its members. Thus in that context I agree with counsel for the defendant that the word 'conviction' means all convictions including past convictions subsequently brought to the Club's notice. The question whether a member with a past conviction is in the opinion of the GC fit or unfit to associate with members of the Club is a matter best left to the GC to determine. I am of the view that the court ought not to step into the shoes of the GC or to usurp the function of the GC to determine matters of common interest to the Club and its members. The decision of the defendant which the plaintiff seeks to impugn is a decision which is "in the opinion of the GC" and is not a question of law but ethics and the court will not interfere even if the decision is unreasonable provided the GC has not acted dishonestly or in excess of jurisdiction. In the case of *Lee v. The Showmens Guild of Great Britain* [1952] 1 All ER 1175 CA, Lord Romer at p. 1185 said:

> First, by the rules in the club cases by which the members agreed to be bound, it was expressly provided that the test of expulsion was whether "in the opinion of" the domestic forum the conduct of a member warranted it, and secondly, the decision on which the intervention of the Courts was unsuccessfully sought were questions of ethics and not of law.
>
> Such questions are peculiarly within the province of a social club and is now well established that the Courts will not interfere even with unreasonable decisions provided that the committee has not acted dishonestly, or in the excess of jurisdiction in arriving at them.

A In *Dawkins v. Antrobus* [1881] 17 Ch D 615 it was held that the court would not interfere against the decision of the members of a club professing to act under their rules unless it could be shown that:

B (a) the rules were contrary to natural justice, or

(b) what had been done was contrary to the club rules, or

(c) there had been *mala fides* or malice in arriving at the decision.

C **[11]** It must be noted that this is a case of cessation of membership and not expulsion. Despite r. 23 not providing with the right to be heard, the defendant notified the plaintiff of the complaints it received and the plaintiff was supplied with the particulars that he had requested for. The plaintiff was given D sufficient opportunity to respond and provide an explanation. The defendant has taken all reasonable steps to satisfy itself that the plaintiff is in fact disqualified from membership by seeking confirmation from the Criminal Investigation Department of the Royal Malaysian Police, the proper authority having records of the E information sought for by the defendant, that the plaintiff has past convictions. There is no reason why the court ought to question the evidence produced by the defendant. The plaintiff has failed to satisfactorily contradict the evidence produced by the defendant. Based on the evidence obtained by the defendant, the F GC was satisfied that r. 23(i)(d) applies. Hence the two conditions specified under r. 23(i)(d) have been met.

[12] In *Lim Yee Cheong v. Haji Mokty bin Datuk Mahmood & Ors* [1984] 1 LNS 39 the Federal Court said *inter alia*:

G > Membership of a club or association is primarily a matter of contract. Members make their payments and in return they become entitled to the benefits of membership in accordance with the Rules.

H Therefore the plaintiff is bound by the rules. Rule 38(i) provides that the GC's decision shall be final and binding on all members. There is no provision for appeal. However I am of the view the court is not precluded from inquiring into the decision if it is shown that the GC's action is tainted with *mala fide* or malice in I arriving at the decision. I find that the defendant has complied with the requirements of natural justice, it has acted within its jurisdiction and has not breached the Rules of the Club. I find no evidence of *mala fide*. The application is therefore dismissed.

[13] With regard to the injunctive order granted pending disposal of this action, I agree with counsel for the defendant that the order ought not to have been granted. In *Florence Bailes v. Dr Ng Jit Leong* [1981] 1 LNS 172; [1982] 1 MLJ 333 Arulanandom J, said *inter alia*:

> As the plaintiff had no proprietary interests in the Club she could not obtain any relief by way of injunction and the courts should not interfere with the decision of the Penang Club Committee which has full responsibility for the administration and discipline of the Club. Therefore, the said injunction ought to be dissolved.

Raus Sharif J (as he then was) said in *Charan Dass Sadhu Ram v. YM Tunku Abdul Aziz & Ors* [2006] 5 CLJ 617 as follows:

> Moreover I am always of the view that injunctions sought by a member in a social and sporting club should not be easily given. To me, whatever disputes relating to the rights and privileges of members of the club should be resolved within the rules of the club. The management of the club should be allowed to administer the club without interference from the courts. If every action of the management of a social and sporting club is allowed to be injuncted by the courts, our courts would be inundated with such actions. At the same time clubs in this country would not be able to function.

Following the abovementioned authorities the injunctive order dated 1 November 2010 is dissolved. Costs of RM1,000 to the defendant.